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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/602,748

06/24/2003

Katrina L. McClelland

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06/13/2005

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/602,748

Applicant(s)

MCCLELLAND ET AL.

Examiner

Christopher J. Novosad

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9, 11-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The finality of the office action dated March 15, 2005 has been withdrawn in view of newly found and applied art. Accordingly, the amendment after final dated May 25, 2005 has been entered.

Claims 10 and 17 have been canceled.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 11-16 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, lines 5 and 10, the recitation "the vehicle" lacks proper antecedent basis.

In claim 9, lines 6 and 10, the recitation "the operator compartment" lacks proper antecedent basis.

In claim 14, line 2, the recitation "the operator's compartment" lacks proper antecedent basis and should be corrected to --the operator compartment--.

*Claim Rejections - 35 USC § 102*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ojima '133.

With respect to claim 9, Ojima '133 shows a control station (Fig. 2) for a backhoe or excavator (Fig. 1 and col. 4, line 50) comprising:

- an operator seat 7;

- a first control tower 21 on the left side of the seat 7 having an upper end (unnumbered) with a first joystick 27 extending therefrom, and a lower end 25A pivotally coupled via 26 (Fig. 8) to the vehicle (Fig. 1) at the floor (unnumbered) of the operator compartment 4, the first tower 21 being constrained to pivot via 26 (Fig. 8) generally fore-and-aft;

- a second control tower 21 on the right side of the seat 7 having an upper end (unnumbered) with a second joystick 45 extending therefrom, and a lower end 25A pivotally coupled via 26 (Fig. 8) to the vehicle (Fig. 1) at the floor (unnumbered) of the operator compartment 4, the second tower 21 being constrained to pivot via 26 (Fig. 8) generally fore-and-aft;

- a first unitary polymeric boot (unnumbered) covering the first control tower 21 and a second unitary polymeric boot (unnumbered) covering the second control tower 21; and

- an adjuster assembly 28-31 (Fig. 8) configured to lock the control towers 21 in different fore-and-aft pivotal positions.

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As to claim 12, the adjuster assembly 28-31 (Fig. 8) includes at least one locking fluid (gas; col. 6, line 6) cylinder 28.

Regarding claim 13, the locking fluid cylinder 28 is a gas-charged spring (col. 6, line 6) configured to apply a pivoting force to the first and second control towers 21 when the locking fluid cylinder 28 is released.

### ***Response to Arguments***

Applicants' arguments have been considered but are moot in view of the new grounds of rejection.

### ***Allowable Subject Matter***

Claims 1-8 are allowed.

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

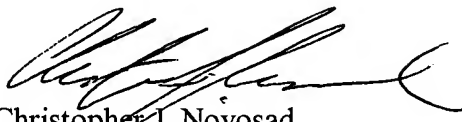
Claims 14-16 and 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

June 8, 2005